

(1) New cited information and data indicating that the determinations made in this document are in need of reconsideration, and

(2) Proposed changes to the mitigation and monitoring requirements contained in these regulations or in the current Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the FEDERAL REGISTER.

(d) NMFS, in response to new information and in consultation with the Navy, may modify the mitigation or monitoring measures in subsequent LOAs if doing so creates a reasonable likelihood of more effectively accomplishing the goals of mitigation and monitoring set forth in the preamble of these regulations. Below are some of the possible sources of new data that could contribute to the decision to modify the mitigation or monitoring measures:

(1) Results from the Navy's monitoring from the previous year (either from Cherry Point Study Area or other locations).

(2) Findings of the Monitoring Workshop that the Navy will convene in 2011 (§218.24(j)).

(3) Compiled results of Navy funded research and development (R&D) studies (presented pursuant to the ICMP (§218.24(d)).

(4) Results from specific stranding investigations (either from the Cherry Point Range Complex Study Area or other locations).

(5) Results from general marine mammal and sound research (funded by the Navy (described below) or otherwise).

(6) Any information which reveals that marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent Letters of Authorization.

§ 218.28 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to §§216.106 and 218.26 and subject to the provisions of this subpart shall be

made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under §218.27, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in §218.20(b), a Letter of Authorization issued pursuant to §§216.106 and 218.26 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the FEDERAL REGISTER within 30 days subsequent to the action.

Subpart D—Taking Marine Mammals Incidental to U.S. Navy Training in the Gulf of Mexico Range Complex

SOURCE: 76 FR 9260, Feb. 17, 2011, unless otherwise noted.

EFFECTIVE DATE NOTE: At 76 FR 9260, Feb. 17, 2011, subpart D was added, effective Feb. 17, 2011 to Feb. 17, 2016.

§ 218.30 Specified activity and specified geographical area and effective dates.

(a) Regulations in this subpart apply only to the U.S. Navy for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occur incidental to the activities described in paragraph (c) of this section.

(b) The taking of marine mammals by the Navy is only authorized if it occurs within the GOMEX Range Complex Operation Areas (OPAREAs), which is located along the Gulf of Mexico coast of the U.S. described in Figures 1 and 2 of the LOA application and consists of the BOMBEX Hotbox (surface and subsurface waters), located off the Alabama and Florida coast, south of NAS Pensacola, and underwater detonation (UNDET) Area E3 (surface and subsurface waters), located within the territorial waters off Padre Island, Texas, near Corpus Christi NAS.

(1) The northernmost boundary of the BOMBEX Hotbox is located 23 nm (42.6

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km) from the coast of the Florida panhandle at latitude 30° N, the eastern boundary is approximately 200 nm (370.4 km) from the coast of the Florida peninsula at longitude 86°48' W.

(2) The UNDET Area E3 is a defined surface and subsurface area located in the waters south of Corpus Christi NAS and offshore of Padre Island, Texas. The westernmost boundary is located 7.5 nm (13.9 km) from the coast of Padre Island at 97°9'33" W and 27°24'26" N at the Westernmost corner. It lies entirely within the territorial waters (0 to 12 nm, or 0 to 22.2 km) of the U.S. and the majority of it lies within Texas state waters (0 to 9 nm, or 0 to 16.7 km). It is a very shallow water training area with depths ranging from 20 to 26 m.

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities within the designated amounts of use:

(1) The detonation of the underwater explosives identified in paragraph (c)(1)(i) of this section conducted as part of the training events identified in paragraph (c)(1)(ii) of this section:

(i) Underwater Explosives:

(A) MK-83 (1,000 lb High Explosive bomb);

(B) MK3A2 anti-swimmer concussion grenades (0.5 lbs NEW).

(ii) Training Events:

(A) BOMBEX (Air-to-Surface)—up to 5 events over the course of 5 years (an average of 1 event per year, with 4 bombs in succession for each event);

(B) Small Arms Training with MK3A2 anti-swimmer concussion grenades—up to 30 events over the course of 5 years (an average of 6 events per year, with up to 10 live grenades authorized per event, but no more than 20 live grenades will be used per year).

(2) [Reserved]

(d) Regulations are effective February 17, 2011 through February 17, 2016.

§218.31 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§216.106 of this chapter and 218.36, the Holder of the Letter of Authorization may incidentally take marine mammals within the

area described in §218.30(b), provided the activity is in compliance with all terms, conditions, and requirements of this subpart and the appropriate Letter of Authorization.

(b) The activities identified in §218.30(c) must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

(c) The incidental take of marine mammals under the activities identified in §218.30(c) is limited to the following species, by the indicated method of take and the indicated number of times:

(1) Level B Harassment:

(i) Sperm whale (*Physeter macrocephalus*)—25 (an average of 5 annually);

(ii) Beaked whales—100 (an average of 20 annually);

(iii) Bottlenose dolphin (*Tursiops truncatus*)—150 (an average of 30 annually);

(iv) Pantropical spotted dolphin (*Stenella attenuata*)—130 (an average of 26 annually);

(v) Clymene dolphin (*S. clymene*)—100 (an average of 20 annually);

(vi) Atlantic spotted dolphin (*S. frontalis*)—100 (an average of 20 annually);

(vii) Spinner dolphin (*S. longirostris*)—135 (an average of 27 annually);

(viii) Striped dolphin (*S. coeruleoalba*)—100 (an average of 20 annually);

(ix) Risso's dolphin (*Grampus griseus*)—150 (an average of 30 annually);

(x) Melon-headed whales (*Peponocephala electra*)—100 (an average of 20 annually);

(xi) False killer whale (*Pseudorca crassidens*)—50 (an average of 10 annually);

(xii) Fraser's dolphin (*Lagenodelphis hosei*)—100 (an average of 20 annually);

(xiii) Pygmy or dwarf sperm whales (*Kogia* sp.)—100 (an average of 20 annually);

(xiv) Pygmy killer whale (*Ferresia attenuata*)—50 (an average of 10 annually);

(xv) Rough-toothed dolphin (*Steno bredanensis*)—100 (an average of 20 annually);